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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	GEN Docket No. 90-314
)	ET Docket No. <u>92-100</u>
Amendment of the Commission's)	
Rules to Establish New Personal)	RM-7140, RM-7175, RM-7617,
Communications Services)	RM-7618, RM-7760, RM-7782,
)	RM-7860, RM-7977, RM-7978,
)	RM-7979, RM-7980
)	
)	PP-35 through PP-40, PP-79
)	through PP-85
)	

To: The Commission

COMMENTS OF PDM/PCS ON PROPOSED RULES

PDM/PCS, by its attorney, hereby files the following comments on the Commission's Notice of Proposed Rule Making on personal communications services ("PCS").

INTRODUCTION

PDM/PCS, through its own activities and those of affiliated companies, is involved in the development, marketing, and application of advanced telecommunications equipment and concepts. For example, one of PDM/PCS's affiliates is currently developing a 900 MHz cordless telephone which will have range, utility, and privacy superior to that of existing cordless telephones in that frequency band. Another affiliated company provides consulting services for interexchange carriers. PDM/PCS itself will become an operator of PCS systems. As a potential operator, PDM/PCS is concerned that the Commission adopt rules

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which will foster the rapid development and growth of the PCS industry.

The purpose of this proceeding -- setting rules which will properly govern the new PCS -- can be accomplished only if the Commission considers the entire market for telecommunications services. While PDM/PCS believes strongly that the free market must determine the ultimate role that PCS will have in American telecommunications, it also believes that the Commission must take care in this proceeding to promulgate rules that will prevent PCS from being directed away from the role which would bring maximum benefit to the public. PDM/PCS believes that each of the rules which the Commission promulgates for PCS should serve two objectives:

- (1) Ensure that there will be vigorous competition between PCS and other telecommunications services -- both mobile and fixed; and
- (2) Ensure that there will be wide participation in the PCS industry and vigorous competition among the various providers of PCS in each market.

I. ENSURING VIGOROUS COMPETITION IN THE PROVISION OF TELECOMMUNICATIONS SERVICES SHOULD BE THE COMMISSION'S CHIEF CONCERN IN FORMULATING ITS PCS RULES

PDM/PCS believes that the Commission should accord PCS regulatory treatment consistent with the nature of the services that the Commission anticipates will be provided.

A. PCS Should Be Classified As A Common Carrier Service

It is clear that there is considerable sympathy for making PCS a private radio service. The primary attraction of this approach appears to be the

prohibition of section 331 of the Communications Act of 1934, as amended (the "Act"), against any regulation of private mobile radio carriers by the states.

However, the advocates of this approach are misguided. PCS services, as currently contemplated, would certainly be common carrier services under the reasoning in NARUC v. FCC, 525 F.2d 630 (D.C. Cir. 1976), cert. denied, 425 U.S. 992 (1976). The services will be offered indifferently to all, and not primarily on a long-term contractual basis. For example, PCS carriers will serve subscribers to other PCS systems (i.e., "roamers") just as cellular carriers do. Indeed, it is difficult to imagine how the relationship of PCS licensees would differ at all from the relationship of cellular carriers to their customers. Unless the Commission is prepared to re-classify cellular and other services which have traditionally been regarded as common carrier to be private services, it must also treat PCS as common carrier services.¹

If the Commission were to classify PCS as a private radio service, extensive litigation would surely follow. Should the court of appeals overturn the classification, the disruption within the PCS industry could be substantial. Even before the courts ruled on the matter, state governments might begin a campaign for extensive revision of the Act to safeguard their role in regulating telecommunications. It would certainly not benefit the PCS industry to become a

¹ Of course, there are some applications of PCS which could appropriately be classified as private radio services. One example would be a PCS system operated entirely within an office. However, the best approach for such truly private PCS applications could probably be handled best under Part 15 of the Commission's rules.

focus of a jurisdictional confrontation between the federal and state governments.

Moreover, to the extent that the proponents of classification of PCS as a private radio service seek primarily to avoid state regulation, their efforts are misplaced. The Commission could substantially reduce the likelihood that any state utility commission would impose significant rate or service regulation on PCS simply by creating a structure for the telecommunications marketplace that would ensure vigorous competition among PCS carriers, cellular carriers, and local exchange carriers ("LECs").

B. The Commission Should Not Permit LECs Or Cellular Carriers To Obtain PCS Licenses In The Markets Where They Provide Such Services

Perhaps the greatest single danger to PCS is that its development will be stifled by companies which have substantial investments in existing technologies. However, PDM/PCS does not advocate excluding the primary competitors of PCS from the industry. The development of PCS can be adequately protected for now by prohibiting the common ownership of PCS and local exchange or cellular franchises.² Under this approach, LECs and cellular carriers would have far less incentive to prevent PCS from competing with their existing services.³

² The prohibition on common ownership should be the same one which the Commission uses to prevent common ownership of wireline and nonwireline carriers in the same market.

³ PDM/PCS believes that to develop competition in the telecommunications marketplace, the Commission should require the LECs to divest their interests in cellular companies within their local exchange service areas. With the advent of PCS, cellular companies will begin competing to provide basic local exchange telephone service. Continuing to have one carrier owned by a LEC will prevent

C. The Commission Should Use The Same MSA/RSA Scheme For Licensing PCS That It Used For Licensing Cellular

While several of the possible licensing areas discussed in the NPRM have superficial appeal, the best choice the Commission can make is to utilize for PCS the same MSA/RSA licensing scheme used for cellular. Whatever else PCS might be, it is a local exchange type service. The role of the PCS provider is to make the origination and termination portion of a call. Some PCS operators may construct networks that transport the calls its customers make. Others may not. However, all PCS operators will provide the radio link between the customer's telephone and the network over which the call is completed, and the radio link over which the calls to its customers are completed. It is the provision of the first and last sections of calls which defines PCS as a local exchange service.

The MSA/RSA approach will provide PCS operators with substantial service areas, while keeping the focus of the service local in nature. The use of MSA/RSA service areas PCS carriers will cause PCS systems to be constructed more quickly and more completely than they would if larger areas were used. Larger service areas would increase the carrier's incentive to "cherry pick" by serving only high-volume areas and reduce the incentive to exploit all potential sources of revenue

the proper development of such service. It is worth noting that even from the LEC perspective, such a divestiture may make financial sense. Pacific Telesis is currently investigating a substantially more extensive divestiture: the separation of its regulated (LEC) entity from all of its non-regulated businesses.

within the licensed market.⁴

The Commission's experience with the licensing of cellular systems demonstrate that the MSA/RSA approach can be extremely efficient is coupled with appropriate supporting regulations. For example, the move from comparative hearings to a random selection process speeded cellular licensing considerably. Once the Commission decided to draw only a winner in each lottery, extortionary litigation -- which was the main factor slowing licensing -- diminished. Such litigation would be virtually eliminated by a regime such as the Commission will use for licensing unserved areas in cellular markets.

Another reason for using the MSA/RSA licensing approach is to maintain a level playing field between cellular and PCS. Giving PCS carriers a substantially larger market could ultimately give them an advantage over cellular companies not related to their own efficiency.⁵ Using the MSA/RSA licensing scheme would also make the prohibition proposed herein against common ownership of cellular and PCS franchises easier to implement.

II. THE BEST WAY TO ENSURE VIGOROUS COMPETITION AMONG PCS LICENSEES IS TO LICENSE MORE LICENSEES IN EACH MARKET

⁴ The issue of transaction costs raised in the NPRM is not one which should concern the Commission. Any licensing scheme is likely to involve consolidation and/or mergers of companies and service areas. Any judgment as to which approach would minimize such costs is likely to be flawed at best. Moreover, such concern with what are really business issues goes beyond the Commission's proper role into the area of micro-regulation.

⁵ Of course, PCS licensees should be free to consolidate systems in the same way that cellular companies have, should such consolidation make financial sense.

While the Commission's rules regarding PCS should be based first upon a consideration of all local exchange type services available to users, the rules must also consider the structure of PCS as a sub-market. Just as the Commission should strive to ensure vigorous competition among providers of local exchange type services, it should strive to ensure that the PCS sub-market is vigorously competitive.

A. The Commission Should Require LECs To Make Capacity On Their Networks Available To All PCS Licensees

The most effective approach to ensuring vigorous competition among PCS providers is to maximize the number of licensees within a market. The best way to maximize the number of PCS licensees is to make the LEC's network backbone available to all such carriers to use. The Commission concluded tentatively in its NPRM that a PCS system integrated with the LEC's landline system would require only 10 Mhz of spectrum. By the same reasoning, if each PCS licensee had the opportunity to integrate its system with the LEC's landline system,⁶ each system would require only 10 MHz of spectrum. Accordingly, the Commission should be able to license at least five PCS carriers in each market.

B. Under Certain Conditions, Cable Systems And Other Companies Should Be Required To Provide Network Capacity To PCS Systems

It is clear from the large number of developmental authorizations for PCS granted to cable television companies that the cable television industry intends to

⁶ As common carriers, the LECs would obtain appropriate compensation under their tariffs for use of their facilities.

become extremely active in PCS. If a cable television company utilizes its cable television facilities for carriage of PCS, it should be required to provide equivalent access to all other PCS carriers in the market on no less favorable terms.⁷ Such an approach, coupled with a separated subsidiary requirement for cable PCS companies, will prevent cable customers from being forced to subsidize PCS services. It will force PCS carriers to compete on the basis of the efficiency of their wireless network design and quality of the service they provide rather than the facilities that they already happen to own. Further, it will prevent such companies from enjoying a windfall from the public rights of way they were granted for other purposes.⁸

CONCLUSION

Based on the foregoing, PDM/PCS recommends that the Commission make PCS a common carrier service with at least 5 licenses to be granted in each of the

⁷ The Commission should impose the same requirement on any entity that uses a network constructed on a public right of way, including electric power companies, gas and/or oil pipelines, railroads, and similar companies.

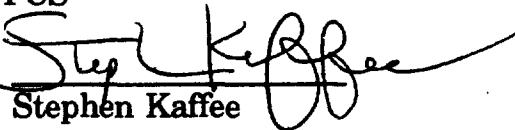
⁸ It must be reiterated that while PCS will use a network backbone to connect cells, the network backbone is ancillary to the PCS service. PCS is the portion of a call which uses the cell or microcell. The central responsibility of the PCS company is providing the wireless portions of the call and delivering the call into the network where it will be completed, whether the public switched telephone network or another network. How the call is transported from the cell - whether the PCS operator constructs its own microwave network or leases lines from the LEC -- is not material. Accordingly, it would be inappropriate for the Commission to find that companies which happen to have networks in existence or which can be adapted to PCS, such as LECs or cable television MSOs, have any advantage as PCS licensees. Such capacity should be regarded as a common asset for all PCS operators to use on an equal, cost-based basis.

cellular MSA/RSAs. PDM/PCS also recommends that cellular licensees and LECs be ineligible for PCS authorizations in the areas where they hold cellular authorizations and/or local exchange service franchises. Finally, PDM/PCS recommends that LECs (and any PCS licensee which utilizes a network built on a public right of way to provide PCS services) be required to make its network available to all PCS operators on the basis of actual cost.

Respectfully submitted,

PDM/PCS

By:

A handwritten signature in black ink, appearing to read "Stephen Kaffee", written over a horizontal line.

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